

# Virginia's Brownfield Remediation Loan Program

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## Program Description, Goals and Intent

The Virginia General Assembly enacted legislation in 2002 and in its 2003 session amended Chapter 22 of the Code of Virginia by expanding the funding activities of the Virginia Water Facilities Revolving Fund (the Fund). Low-interest loan financing is now available to local governments, public authorities, partnerships and/or corporations for specific remediation activities on contaminated properties across the Commonwealth.

The following language is now included in the Virginia Wastewater Revolving Loan Fund enabling legislation:

***Section 62.1-229.2. Loans for remediation of contaminated properties.***

*Loans may be made from the Fund, in the Board's discretion, to local governments, public authorities, partnerships or corporations for necessary remediation activities undertaken at a brownfield site as defined in §10.1-1230 for the purpose of reducing ground water contamination or reducing risk to public health. The Board shall develop guidelines for the administration of such loans.*

The purpose of this Brownfield remediation financing legislation is to provide a source of low-interest loan financing to encourage the cleanup and reuse of contaminated properties. Because the source of money to begin this funding initiative is through Virginia's Clean Water Revolving Loan Fund (VCWRLF) various Federal funding policies place limitations on eligible activities. Section 319 of the Federal Water Quality Improvement Act of 1987 restricts Brownfield remediation funding eligibility under Virginia's revolving loan program to properties that suffer some type of water quality contamination. The State's funding program, therefore, must serve a public purpose by protecting or restoring a ground water supply or eliminating surface water degradation.

Loan assistance is now available for needed site remediation activities undertaken by the owner, or an entity that has property interest, and where the remediation and/or cleanup effort will result in an improvement to or protection of surface or groundwater.

## Eligible Applicants

Loan recipients must be a unit of local government, a public service authority, a partnership, or a corporation chartered to conduct and carry out business in the Commonwealth of Virginia. Recipients must also own, operate, or have a security interest (such as the secured party for a mortgage on the property, a trust deed, a tax lien or the like) or have entered into a contract for the purchase or use of an eligible site. The site to be remediated must be within the territorial borders of the Commonwealth of Virginia.

## Program Long-term Objectives and Benefits

It is anticipated that by reducing or eliminating water quality threats to the health and welfare of Virginia's citizenry and to the environment, the Brownfield remediation low-interest loan program will help facilitate the sale and reuse of industrial and commercial properties in the Commonwealth. This is an important benefit to all Virginia residents. As the potential environmental liabilities of reusing or further developing existing commercial properties diminish, economic benefits are expected for both the buyer and seller. DEQ is optimistic that its Brownfield remediation funding initiative will provide secondary benefits as follows:

- facilitate the creation, preservation, or addition to parks, greenways, open spaces, recreational properties, or other properties for nonprofit purposes;
- help satisfy the economic development needs of the associated communities by promoting site development or reuse, creating employment opportunities in areas of low income and/or high unemployment or increasing local tax bases; and/or
- facilitate the use or reuse of existing infrastructure and/or structures located in the proximity of the sites.

An added benefit is the potential decrease of commercial sprawl onto pristine lands. By overseeing the process, DEQ is able to ensure that the cleanup activity achieves a satisfactory level of human health and environmental protection.

## Loan Qualifying Standards

In order to be considered for funding through this low-interest loan initiative, the project remediation effort must:

1. *Improve or prevent a groundwater or surface water quality problem, and the*
2. *Applicant must be able to demonstrate loan repayment capability to the satisfaction of the program including the provision of adequate collateral if necessary.*

## Site Characterization and Risk Assessment

A Site Characterization & Risk Assessment Report (or other equivalent document) needs to be developed which characterizes the site, identifies the problem areas, and evaluates the level of risk of the contaminated site to human health and the environment. The report should outline the proposed steps to be taken for environmental recovery, site remediation activities, and property reuse capabilities.

This Site Characterization & Risk Assessment Report is an integral part of the application/loan approval process. It must be completed prior to loan closing, and is used to develop the eligible scope of remediation activities and the level of funding to be undertaken at the site. Loan approval will be delayed pending completion and approval of this Site Characterization and Risk Assessment Report.

- *The Site Characterization and Risk Assessment Report must be prepared by a firm or individual qualified to perform such work. The participant will receive approval of the Site Assessment & Remediation Plan that will outline the remediation expenditure of the loan proceeds; however, this cost is not reimbursed until the project loan is approved and the applicant proceeds to the physical remediation site cleanup stage. A final completion report, which evaluates the success of the remedial action, will be necessary.*

## Funding Availability

No special appropriation has been budgeted to begin this funding initiative. Therefore, DEQ will make funding available from existing revenue through Virginia's Clean Water Revolving Loan Fund Program. As stated, Section 319 of the Federal Clean Water Act allows the state to use some of its State Revolving Fund (SRF) money to finance non point source activities, including Brownfield remediation projects that improve or resolve water quality issues.

During the pilot stage or initial years of this funding initiative, DEQ will make funds available through a mechanism identified as a "goal oriented" funding set-aside. Brownfield remediation applications will be solicited on an annual basis at the same time DEQ is soliciting applications for Virginia's Clean Water Revolving Loan Fund (VCWRLF) financing. The VCWRLF operates on a yearly cycle and its funding cycle begins July 1st and runs through June 30th of the following year.

On July 1, 2002, the VCWRLF program began a goal-oriented set-aside of up to 10% of its yearly VCWRLF project repayment revenue to implement this Brownfield remediation funding initiative, with a total set-aside of 5 million dollars. Brownfield remediation applications will be solicited, received, evaluated, and considered for funding from this set-aside in conjunction with DEQ's mainstream VCWRLF loan application solicitation process.

Qualifying Brownfield remediation applicants will be considered and recognized for funding by the State Water Control Board (SWCB) at its scheduled Board meeting in the fall of each year as the Board adopts its yearly VWRLF project-funding list. If this goal set-aside is not achieved during this solicitation period, then a second solicitation for Brownfield remediation applications can occur on or around the 1st of January of the following year. If the set aside money is not utilized by this second solicitation process, the funds remaining revert back to the VWRLF mainstream program for reuse. This goal-oriented set-aside will be utilized to attempt to provide funding to all qualifying Brownfield remediation loan requests.

A new goal set-aside for Brownfield remediation projects will be established in each subsequent year. This concept will assure a continued yearly source of loan money for certain remediation projects until a separate or supplemental Brownfield remediation appropriation is made to support this funding initiative and/or a VWRLF project prioritization system can be integrated to include and consider various Brownfield remediation projects. Future goal set-aside percentages and amounts will be established based on DEQ's analysis of potential loan demand in any future year, current program progress, marketing results, and other indicators as deemed appropriate.

If Brownfield remediation applications exceed available funding, DEQ will either consider modifying its yearly set-aside goal or prioritize its potential Brownfield recipients for funding in terms of water quality impact and usage factors. Proposals that identify an impact to a drinking water source will carry a higher funding priority than other related water quality impacts on the environment. Other environmental water quality remediation needs may be deferred until the next funding cycle depending on available funds.

Potential applicants will be notified of DEQ's yearly remediation goal set-aside during the yearly application solicitation process or other public notices.

## Loan Proceeds Utilization

Loan proceeds can be used for the following remediation activities:

*1. Costs associated with remediation of sites contaminated as a result of a hazardous substance, pollutant, or contaminant release including, but not limited to:*

- a) excavation, removal, and disposal of contaminated soil or sediments including tunnels and underground structures contributing to ground water contamination;*
- b) returning property to its original grade or topography;*
- c) construction of well(s);*

- d) well abandonment and capping of polluted wells;*
- e) excavation and disposal of underground storage tanks not subject to corrective action and receiving financial assistance through Virginia's Petroleum Storage Tank Fund; and*
- f) other approved site remediation construction-type activities.*

*2. Reimbursement of any outside services procured for the development of the site assessment or outside engineering services needed to develop engineering documents to facilitate remediation and site cleanup activities.*

*3. Cost associated with conducting any real estate title search and related title work (including legal fees and any filing and recording cost related to any collateral to be assigned to VRA for loan security) as well as any legal or additional professional services related to the assigned collateral such as title insurance premiums and survey fees.*

*[Reimbursement of services for numbers two and three above are considered once the loan agreement is executed and the project moves to the remediation stage.]*

The following site remediation activities **do not** qualify for loan reimbursement under this funding initiative. Ineligible remediation activities include, but are not limited to:

- 1. Any construction activity not necessary for the protection of groundwater or surface water by remediation of hazardous substance, pollutant, or contaminant released at properties;*
- 2. Improvement at the site to enhance real estate value but not related to site remediation efforts, including, but not limited to, any new structures or site reuse appurtenances;*
- 3. Any legal fees incurred by the owner in regards to the property or the remediation effort;*
- 4. The permanent relocation of residents;*
- 5. Testing not directly related to corrective action or required by the Site Assessment & Remediation Plan including Environmental audits or pre-purchase agreements unless performed as part of a corrective action;*
- 6. Any work accomplished or performed using 'in-kind services' or labor and services provided by the applicant's existing work force;*
- 7. Payment of any administrative or civil fines; and*
- 8. Refinancing of existing debt on site.*

## **Loan Interest Rates and Terms**

Short-term loans up to ten (10) years will be amortized and the interest rate will be fixed at 300 basis points below the prevailing prime rate as reported by "Bloomberg".

Long-term loans from 10 to Twenty (20) years are available on a case-by-case basis as determined by total project loan need, the applicant's ability to establish or create an adequate loan repayment source and loan security needs. Long-term Loans will be fixed at a 3% interest rate.

Loans amortized over a 20 year term will be considered "bonded indebtedness" and carry applicable Bond requirements.

The length of the loan will be based on the recipient's request provided that the request is supported by Virginia Resources Authority (VRA) financial capability Analysis. VRA will evaluate the applicant's credit history and repayment capability evaluating the applicant's potential cash flow forecast, the proposed security arrangements and the potential revenue stream available to repay the loan to determine the repayment time period.

The interest rate and the loan terms will remain in effect for a 12-month period following loan approval by the SWCB. The interest rates for the short-term authorized loans would be adjusted at closing should the prevailing prime rate continue to decline. The loan authorization period can

be extended at the sole discretion of the SWCB following receipt of a written request from the potential loan recipient, however the interest rate would be subject to recalculation based on banking and market conditions that exist at that time.

## Loan Repayments

Loans will be amortized and repaid to the Fund on a quarterly or semiannual basis. Repayment of the loan will begin following completion of the remediation activity but no later than 360 days following execution of the loan agreement. It is anticipated that all needed site remediation activity can be completed within this 360-day time frame. The first loan payment, however, can be adjusted should the remediation effort take longer than anticipated to reflect only interest accrued on actual funding released.

## Loan Amount (Minimum and Maximum)

A maximum loan amount of one million dollars (\$1,000,000) has been established for any single remediation loan and the recipient's total loan need must exceed ten thousand dollars (\$10,000). State remediation loans, therefore, will range between \$10,000 and \$1,000,000 per site. Since low-interest financing is limited to the physical site remediation effort and not any of the site reuse construction activities, it is believed that a maximum loan of \$1,000,000 is sufficient to resolve all known eligible site contamination issues in the Commonwealth.

Should this \$1,000,000 per site maximum limitation become insufficient to resolve the water quality issues at a single site, the applicant can apply for a second loan the following year. This action would follow receipt of written justification and explanation of additional loan needs from the applicant and concurrence from DEQ.

## Application Procedure

Before submitting an application, the applicant should consult with DEQ's Clean Water Financing and Assistance Program staff to determine if the project is eligible for funding consideration. To apply, an applicant must submit a completed application concerning the project to DEQ for review. No application will be reviewed until it is complete to the satisfaction of DEQ. An application is included with this guidance document under Appendix A. Applicants may also obtain application forms from DEQ's web site or by contacting:

**Ms. Karen M. Doran**  
**Department of Environmental Quality**  
**Clean Water Financing & Assistance Program**  
**P. O. Box 1105**  
**Richmond, VA 23218**  
**(804) 698-4133**

## Application Evaluation Process

When an application for loan assistance is complete, DEQ will make every reasonable effort to determine loan eligibility, obtain VRA's financial capability concurrence, and forward its recommendation for approval to the State Water Control Board within ninety (90) days from the date it receives the application for assistance. The application for assistance and/or the Site Characterization and Risk Assessment Report must contain detailed cost estimates for the remediation effort to be undertaken. DEQ will determine if the estimated cost and proposed

activities are eligible and /or reasonable prior to loan approval. DEQ will assist the applicant in developing the budget for the completion of the project.

The loan must be secured or collateral provided to the satisfaction of the DEQ and VRA. VRA will establish underwriting procedures based on industry standards to evaluate the applicant's ability to repay the loan through due diligence looking at financial forecasting, appraisals, establishing loan collateral needs and identifying an adequate revenue stream needed for loan repayment.

After VRA completes its financial capability analysis, a determination shall be made regarding the adequacy of the collateral available to secure the requested financing. If the proposed security arrangements or collateralization is acceptable by the applicant and all outstanding criteria and application standards are met, the loan can be approved and the loan agreement executed.

The State Water Control Board's approval of the loan, the loan terms and interest rate will remain in effect for a period not to exceed one (1) year. The loan agreement must be executed and remediation must begin within that time frame. DEQ, in its sole discretion, may grant time extensions with respect to this one-year loan approval and rate period.

## Disbursement of Loan Funds

Loan funds will be disbursed to the loan recipient on a reimbursement basis as expenses for remediation are incurred by the loan recipient. Loan disbursement will begin following the execution of the loan agreement. As the loan recipient incurs expenses and receives bills for loan eligible activities undertaken, the loan recipient will prepare and submit a "Request for Disbursement" to DEQ and attach copies of appropriate contracts, billing statements, and invoices received to date. Upon receipt of the "Request for Disbursement", a representative of DEQ's Clean Water Financing and Assistance Program will review the invoices submitted and may contact the loan recipient to arrange a visit to the project site to verify that invoiced expenses do pertain to work performed on an eligible remediation activity.

Disbursement approval will generally be authorized within 3 working days from the date DEQ receives a complete disbursement request. DEQ will authorize VRA to make the payment to the loan recipient. Actual transfer of money to the loan recipient per the request for disbursement should occur within 5 working days of DEQ's authorization.

Funds will initially be disbursed at 100% of claimed eligible invoiced costs up until the remediation activity based on cumulative fund draws reach the 95% mark. At that time the remaining 5% of available loan proceeds will be withheld until all remaining eligible remediation activities are complete and appropriate DEQ personnel conduct a final inspection.

Once all eligible and specified remediation activities are completed, the recipient will request a final inspection along with its submittal of a final disbursement request. Personnel from DEQ will conduct the final site inspection. Following completion of this inspection, DEQ will authorize the reimbursement of all remaining documented costs.

## Right of Appeal

Any applicant that believes its application for Brownfield remediation funding was unfairly denied by DEQ, or inappropriately declared ineligible for funding consideration, may appeal the

decision before the State Water Control Board. To initiate the appeal process, the applicant must first submit a letter to DEQ that expresses intent to appeal DEQ's decision regarding the loan application. The letter must include sufficient detail to identify the application and state the grounds for the appeal.

Upon receipt of the notice of intent to appeal, DEQ will review the case and provide the recipient with a date on which the SWCB will hear the appeal. At the appointed time, the applicant may present the case before the SWCB. The appeal process is not applicable to actions taken by DEQ that were based on the results of a credit evaluation and the subsequent loan underwriting or collateral recommendations which were provided to DEQ by VRA.